

**Medical malpractice insurance reform alternatives testimony
Senate Health & Long Term Care, Senate Judiciary, House Health
Care Committees**

Commissioner Mike Kreidler

March 22, 2005

Opening:

I want to thank all of you for your leadership in considering alternatives to the two medical malpractice initiatives that go before voters this fall.

I have said many times... while my expertise and authority is focused on insurance aspects of this issue, any real solution needs to address all three dimensions of the problem:

- patient safety
- insurance reform
- and reforms to our tort system

The market is improving:

For most physicians... the cost of malpractice insurance is becoming more available and more affordable.

In fact, based on recommendations from industry representatives, I have directed that the Market Assistance Plan we set up during the peak of the hard market 3 years ago be shut down next week – due to lack of business.

That program – known as the MAP – helped match doctors needing coverage with willing insurers. But only two doctors applied for help the past eight months.

Why bother to implement reforms?

If things are getting better – why do anything?

1. Because the system needs to be improved – both to protect the public and to make sure that money isn't wasted in disputed cases.
2. It's important to make systematic reforms... because I can guarantee you that there will be another "hard" market where insurance costs spike and it becomes difficult to obtain.

3. This kind of public policy should be developed through the “give and take” of the legislative process – not as one-sided approaches put together behind closed doors by advocates on either extreme.

The best alternative for voters is one with bipartisan support. This will ensure that two bad initiatives won’t pass.

4. And... because this kind of insurance is still expensive – particularly for high risk specialties – we need to do everything possible to prevent unnecessary costs while still protecting the rights of malpractice victims.

Insurance reform:

We need data, data, data:

As an insurance regulator... I strongly support the provisions that expand the data gathering authority of my office. This also has been recommended by Congress’ General Accounting Office.

We presented a report of our analysis of closed malpractice claim data to the legislature earlier this month. The limitations on our ability to gather this information were obvious. You deserve to have the facts you need to set public policy – setting policy based on anecdotes is a poor substitute for data. There appears to be bipartisan support for this kind of improvement and I’m pleased to see that it is included in HB 2292.

Prior approval:

I fully support a requirement that insurance companies be required to justify and get approval for malpractice rate and policy changes before they can be implemented.

Sufficient notice:

I also support an increase to 90 days in the notice an insurer has to give before canceling or non-renewing a malpractice policy.

Supplemental program not included:

I am disappointed that the supplemental malpractice insurance program is not under active consideration by the Legislature. But I will continue work to develop alternatives that can be engaged when market cycles create hardships.

Three Strikes:

Stepping away from my role as insurance regulator for one moment...

I have to comment that I am not a fan of “three strikes” provisions – either in criminal or in licensing laws.

I believe that disciplinary boards should be given direction and held accountable... but that artificial limits can have “unintended consequences.”

I appear to be outnumbered on both sides of the aisle on this particular approach – however – and I do recognize that the language of this provision has been improved over earlier efforts.

The next hard market:

In closing...I want to again commend you on your efforts.

I have seen three “hard market” cycles in the past 35 years – as a health care provider in the 1970s, as a legislator in the mid-80s, and most recently as Insurance Commissioner.

If we act responsibly now – Washingtonians will fare much better than the rest of the country when the next cycle happens.

Closing:

To summarize...

- I believe HB 2292 represents good public policy
- It is a viable alternative for voters
- And, with a little more work... it’s capable of gathering bi-partisan support

I’m happy to answer any of your questions.